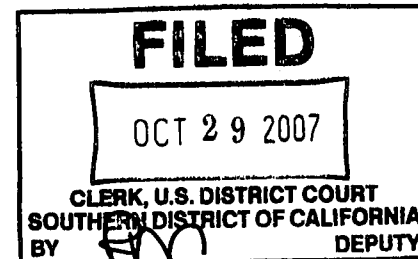


Name ALBERTO HERNANDEZ
 Address P.O. BOX 3030 CS-214
HIGH DESERT STATE PRISON
SUSANVILLE, CA. 96127
 CDC or ID Number #V.68614

2004	1983
FILING FEE PAID	
Yes	No
IFP MOTION FILED	
Yes	No
COPIES SENT TO	
Court	ProSe



PRO-PER

SUPERIOR COURT OF LOS ANGELES
COUNTY OF LOS ANGELES
 (Court)

<u>ALBERTO HERNANDEZ</u>
Petitioner
vs.
<u>CAPTAIN, FAULK WARDEN</u>
Respondent

PETITION FOR WRIT OF HABEAS CORPUS

No. 07CV 2082 BTM POR

(To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court [as amended effective January 1, 2007]. Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

This petition concerns:

- ☒ A conviction ☐ Parole
☐ A sentence ☐ Credits
☐ Jail or prison conditions ☐ Prison discipline
☐ Other (specify): _____

1. Your name: ALBERTO HERNANDEZ
2. Where are you incarcerated? HIGH DESERT STATE PRISON
3. Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

1-COUNT OF MURDER; 1-COUNT OF TORTURE, 1-COUNT 2ND DEGREE ROBBERY
1-COUNT OF RESIDENTIAL ROBBERY, 1-COUNT OF BURGLARY

- b. Penal or other code sections: _____

- c. Name and location of sentencing or committing court: PC. 187, PC. 211; 206, 459
PC. 136.1 PC. 211 AND 213.

- d. Case number: VA077024

- e. Date convicted or committed: 10-15-04

- f. Date sentenced: 11-17-04

- g. Length of sentence: LIFE WITH OUT PAROLE, AND 10 YRS ENHANCEMENTS

- h. When do you expect to be released? DON'T GOT NO DATE

- i. Were you represented by counsel in the trial court? ☒ Yes. ☐ No. If yes, state the attorney's name and address:

JAMES GOLDSTEIN 15260 VENTURA BLVD; SUITE 1730
SHERMAN OAKS, CA. 91403

4. What was the LAST plea you entered? (check one)

☒ Not guilty ☐ Guilty ☐ Nolo Contendere ☐ Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

☒ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

IMPOSED UPPER TERM SENTENCES

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

1. UNDER CUNNINGHAM / BLAKELY / APPENDI, NONE OF THE FACTORS THE TRIAL JUDGE USED TO SENTENCE ME TO THE UPPER TERM WAS CONSTITUTIONALLY ALLOWED, AND THE NEW (BLACK) DECISION IS WRONG.
2. UPON SENTENCING THE TRIAL JUDGE TACKED ON ENHANCEMENTS AND GAVE I PETITIONER THE UPPER TERM LIFE WITHOUT PAROLE.
3. CUNNINGHAM V. CALIFORNIA MAKE SENTENCE ENHANCEMENTS ILLEGAL VIOLATING PETITIONERS RIGHT TO DUE PROCESS OF LAW...
4. THE U.S SUPREME COURT JUST HAND DOWN A RULING IN CUNNINGHAM V. CALIFORNIA PERTAINING TO SENTENCING ENHANCEMENTS.

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

CUNNINGHAM V. CALIFORNIA (JAN 22, 2007)

APPENDI V. NEW JERSEY (2000) 530 U.S. 466

BLAKELY V. WASHINGTON (2004) 542 U.S. 296.

CREDIBILITY OF A WITNESS

a. **Supporting facts:**

1. CODEFENDANT GERARDO ALTAAMINAND, WAS NOT TRUTHFUL
IN TESTIMONY. SEE (CT PG 113-132, ALSO CODEFENDANT
VALDEZ, SEE (CT 133, 140

2. THE SIXTH AMENDMENT "GUARANTEES TO THE CRIMINALLY ACCUSED A FAIR TRIAL BY A PANEL OF IMPARTIAL, INDIFFERENT JUROR" IT SHOULD ALSO CONCLUDE THAT THE ERROR WAS PERJUDICIAL SINCE THE JURY COULD NOT HAVE CONVICTED PETITIONER WITHOUT THE TESTIMONY OF (GOMEZ) SEE (RT 643)

3. THE SIXTH AMENDMENT GUARANTEES DEFENDANTS THE RIGHT TO CONFRONT AND CROSS-EXAMINE ADVERSE WITNESS.

b. Supporting cases, rules, or other authority:

- (TINSLEY V. BORG (9th CIR 1990) 895 F.2d 520, 523

- (PEOPLE V. WILLIAMS (1997) 16 CAL. 4TH 153, 257

GROUND 3

INEFFECTIVE ASSISTANCE OF COUNSEL

(A) SUPPORTING FACTS

MY TRIAL ATTORNEY DEPRIVED ME OF MY RIGHT UNDER
THE SIXTH AMENDMENT RIGHT BY FAILING TO OBJECT
TO PLEA PROVISION. WHEN I ASKED HIM TO DO.,

8. Did you appeal from the conviction, sentence, or commitment? ☒ Yes. ☐ No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

CALIFORNIA COURT OF APPEAL

b. Result AFFIRMED (SEE EXA) c. Date of decision: 6-29-06

d. Case number or citation of opinion, if known: B179596

e. Issues raised: (1) IMPOSED UPPER TERM SENTENCES

(2) CREDIBILITY OF A WITNESS

(3) INEFFECTIVE ASSISTANCE OF COUNSEL

f. Were you represented by counsel on appeal? ☒ Yes. ☐ No. If yes, state the attorney's name and address, if known:

RALPH H. GOLDBEN PMB #389, 5662 CALLE REAL - GOLETA, CA. 93117

9. Did you seek review in the California Supreme Court? ☒ Yes ☐ No. If yes, give the following information:

a. Result DENIED WITHOUT PREJUDICE (SEE EXB) b. Date of decision: 10-18-2006

c. Case number or citation of opinion, if known: S145437

d. Issues raised: (1) IMPOSED UPPER TERM SENTENCES

(2) CREDIBILITY OF A WITNESS

(3) INEFFECTIVE ASSISTANCE OF COUNSEL

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

THE U.S. SUPREME COURT JUST HAND DOWN A RULING IN CUNNINGHAM PERTAINING TO SENTENCING ENHANCEMENTS.

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

I. DO TO THE FACTS MY APPEAL WAS DENIED WITHOUT PREJUDICE TO ANY RELIEF TO WHICH DEFENDANT MIGHT BE ENTITLED AFTER THE U.S. SUPREME COURT DETERMINES IN CUNNINGHAM V. CALIFORNIA, NO. 05-6551.

b. Did you seek the highest level of administrative review available? ☒ Yes. ☐ No.
Attach documents that show you have exhausted your administrative remedies.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**SECOND APPELLATE DISTRICT****DIVISION TWO****THE PEOPLE,****Plaintiff and Respondent,****v.****JESUS CISNEROS et al.,****Defendants and Appellants.****B179596****(Los Angeles County
Super. Ct. No. VA077024)****COURT OF APPEAL - SECOND DIST.****FILED****JUN 29 2006****JOSEPH A. LANE****Clerk****Deputy Clerk**

APPEAL from a judgment of the Superior Court of Los Angeles County. Tricia Ann Bigelow, Judge. Affirmed and modified, with directions.

Tracy J. Dressner, under appointment by the Court of Appeal, for Defendant and Appellant Jesus Cisneros.

Colleen M. Rohan, under appointment by the Court of Appeal, for Defendant and Appellant Eric Fernandez.

Ralph H. Goldsen, under appointment by the Court of Appeal, for Defendant and Appellant Alberto Hernandez.

Peter Gold, under appointment by the Court of Appeal, for Defendant and Appellant Armando Salmon.

(EXB)

Court of Appeal, Second Appellate District, Div. 2 - No. B179596
S145437

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

JESUS CISNEROS et al., Defendants and Appellants.

**SUPREME COURT
FILED**

OCT 18 2008

**Frederick K. Olrich, Clerk
DEPUTY**

Petitions for review denied without prejudice to any relief to which defendant might be entitled after the United States Supreme Court determines in *Cunningham v. California*, No. 05-6551, the effect of *Blakely v. Washington* (2004) 542 U.S. 296 and *United States v. Booker* (2005) 543 U.S. 220, on California law.

George, C. J., and Baxter, J., were absent and did not participate.

WERDEGAR

Acting Chief Justice

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☒ Yes. If yes, continue with number 13. ☒ No. If no, skip to number 15.

13. a. (1) Name of court: U.S. CENTRAL DISTRICT OF CALIFORNIA
- (2) Nature of proceeding (for example, "habeas corpus petition"): HABEAS CORPUS PETITION
- (3) Issues raised: (a) IMPOSED UPPER TERM SENTENCES; CREDIBILITY OF A
- (b) WITNESS, INEFFECTIVE ASSISTANCE OF COUNSEL
- (4) Result (Attach order or explain why unavailable): STILL WAITING TO GET DISMISS WITHOUT PREJUDICE
- (5) Date of decision: _____
- b. (1) Name of court: _____
- (2) Nature of proceeding: _____
- (3) Issues raised: (a) _____
- (b) _____
- (4) Result (Attach order or explain why unavailable): _____
- (5) Date of decision: _____

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

CUNNINGHAM V. CALIFORNIA IS A 2007 RULING THAT EFFECTS
SENTENCING ENHANCEMENTS

16. Are you presently represented by counsel? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? ☒ Yes. ☐ No. If yes, explain:

HABEAS CORPUS - U.S. CENTRAL DISTRICT

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

THIS COURT IS DENIEDING IT WITHOUT PREJUDICE DO TO THE
FACT OF U.S. SUPREME COURT DENIEDING MY PETITION WITHOUT PREJUDICE

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date:

10-23-07

Alberto Hernandez
(SIGNATURE OF PETITIONER)

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM)

I (a) PLAINTIFFS

Alberto Hernandez

Captain

FILED

OCT 29 2007

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Lassen
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT No
(EXCEPT IN U.S. PLAINTIFF CASES ONLY)

COPIES SENT TO

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Alberto Hernandez
PO Box 3030
Susanville, CA 96127
V-68614

ATTORNEYS (IF KNOWN)

-070V 2082 BTM POR

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PT | DEF | | PT | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. <input type="checkbox"/> Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(e)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input checked="" type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE 10/29/2007

SIGNATURE OF ATTORNEY OF RECORD

R. Mullen